

105 FERC ¶ 61,298
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

CenterPoint Energy Gas Transmission Company

Docket No. RP03-591-001

ORDER LIFTING REFUND OBLIGATION SUBJECT TO CONDITIONS
AND DISMISSING REQUEST FOR CLARIFICATION OR REHEARING AS MOOT

(Issued December 18, 2003)

1. On September 30, 2003, the Commission issued an order accepting and suspending tariff sheets, subject to refund and further proceedings, filed by CenterPoint Energy Gas Transmission Company (CEGT), to be effective October 1, 2003.¹ On October 28, 2003, CEGT filed a request for clarification, or in the alternative, rehearing. The tariff sheets, which would allow CEGT to offer discounts based on price indexes, make changes to CEGT's General Terms and Conditions (GT&C) by adding a new category of index-based discount agreements that would not constitute a material deviation from CEGT's pro forma service agreement. As discussed below, the Commission approves the tariff sheets, subject to conditions, removes the refund condition, and dismisses CEGT's October 28 request as moot. This order benefits the public by giving CEGT the ability to structure competitive transportation arrangements that are consistent with current Commission policy on such discounts.

Background

2. CEGT proposes to revise Section 12.5(a) of its GT&C to permit it to enter into discounted rate agreements based on published index prices for specific receipt or delivery points or other agreed-upon published pricing reference points for price determinations, i.e., such a discounted rate may be based on the differential between published index prices or arrived at by formula. Such discounted rate (1) shall not change the underlying rate design, (2) shall not include any minimum bill or minimum

¹ CenterPoint Energy Gas Transmission Co., 104 FERC ¶ 61,331 (2003).

take provision that has the effect of guaranteeing revenue, and (3) shall, in each service agreement entered into pursuant to Section 12.5(a)(vi), define the rate component to be discounted.

Discussion

3. In its order accepting and suspending CEGT's filing, the Commission decided to postpone a decision on the merits of CEGT's proposal because of the similarity of the issues raised herein with those raised in several other proceedings pending before the Commission. The Commission rejected a similar proposal in Northern Natural Gas Company (Northern) because it had determined there that index-based rate provisions can only be included in negotiated rate agreements, not discount agreements.² However, on appeal, the D.C. Circuit found that the Commission had not adequately explained its reasons for rejecting Northern's proposal.³ The court said the Commission failed to explain why the agreements covered by Northern's proposal could not be treated as discount agreements rather than negotiated rate agreements as long as the rate involved was a formula rate and was bounded by the maximum and minimum recourse rate contained in the pipeline's FERC tariff. The court dismissed, as having been decided without a reasoned explanation, several cases in which the Commission held that index-based rate provisions can be offered only pursuant to a pipeline's negotiated rate authority. However, the Court further stated that the Commission was free to pursue another explanation.

4. Additionally, in the Modification of Negotiated Rate Policy (Revised Policy Statement), issued July 25, 2003 in Docket No. PL02-6-000, the Commission determined that it will no longer permit the use of gas basis differentials to price negotiated rate transactions.⁴ In essence, the revised policy was based on a concern that, because negotiated rates may exceed the pipeline's maximum recourse rate, negotiated rates based on basis differentials could provide pipelines an incentive to withhold capacity in order to manipulate the gas commodity markets. A number of parties have requested rehearing of the July 9 policy statement. Among other things, they contend that basis differentials are a reasonable way of placing a value on the transportation of gas and that such a pricing methodology permits flexibility and allows parties to engage in hedging transactions. The Commission is currently considering these requests to reconsider the policy against the use of basis differentials in negotiated rate transactions.

² See 90 FERC ¶ 61,064 (1998), reh'g denied, 98 FERC ¶ 61,106 (2002).

³ Northern Natural Gas Company v. FERC, No. 02-1107 (D.C.Cir. July 25, 2003).

⁴ See 104 FERC ¶ 61, 134 (2003), reh'g pending.

5. CEGT argues that, while its proposal is similar to the tariff provision that was rejected by the Commission in Northern, it satisfies the requirements of both the Commission's decision in Northern and the Court's decision. Further, CEGT states that, because the proposed discount rates would always be bound by CEGT's minimum and maximum tariff rates, the Commission's concerns expressed in the Revised Policy Statement are not applicable.

6. In a contemporaneous order in Northern responding to the Court's decision,⁵ the Commission held that the distinction between discounted rates and negotiated rates is that discounted rates must stay within the maximum and minimum rates in the pipeline's tariff and be based on the same rate design as the tariff rates, but negotiated rates are not so limited. Accordingly, the Commission found that pipelines may enter into discounted rate agreements that use formulas which produce fluctuating transportation rates during the term of the agreement, so long as the rates remain within the range established by the maximum and minimum rates set forth in the pipeline's tariff. Also, because discounted rates are constrained by the pipeline's maximum tariff rates, the Commission held that regardless of the approach it ultimately took with respect to the use of basis differentials in negotiated rate transactions, it would permit discounted rate formulas to be based upon gas commodity price differentials between different points.

7. Therefore the Commission permitted the formulas used to establish discounted rates to include basis differentials. The Commission concluded that its concerns about the use of basis differentials in negotiated rates are not present to the same degree in the context of discounted rates based on basis differentials. That is because discounted rates, unlike negotiated rates, are capped by the pipeline's maximum cost-of-service rate. Thus, the concern about basis differential pricing giving the pipeline an incentive to withhold capacity in order to achieve higher revenues than would be possible under its maximum cost-of-service rates is not present in the discounted rate context. Given this fact, the Commission found that the benefits of allowing the use of basis differentials to price transportation service in discount agreements outweigh any potential harm through giving the pipeline an incentive to withhold capacity.

8. Thus, the Commission found that rate formulas that produce varying rates during the term of an agreement are permissible as discounted rates, so long as the rate remains within the range established by the maximum and minimum rates set forth in the pipeline's tariff. Since the proposal filed here would authorize formula-based discount rates, which CEGT states (1) would be bounded by the maximum and minimum rates contained in CEGT's FERC gas tariff, (2) would not change the rate design, (3) would not include any maximum or minimum rate provision, and (4) would state in the service

⁵ Northern Natural Gas Company, Order On Remand, Docket No. RP00-152-002, 105 FERC ¶ 61,299 (2003).

agreement which rate components are discounted, the proposal is consistent with the Commission's decision in the contemporaneous order on remand.

9. However, the tariff language submitted by CEGT does not literally state that any such discount agreement is bounded by the maximum and minimum rate. The proposed tariff language should be refiled to so state within 10 business days after this order issues. The same language should be included in the terms of any agreement executed to implement it. Subject to this condition, the proposed tariff is acceptable and the refund condition contained in the September 20 Order is lifted.

10. In its request for clarification or rehearing CEGT asked that the Commission lift the refund obligation imposed by the September 30, 2003 order on the grounds that CEGT's proposed tariff language was consistent with the Northern remand. Since the Commission is approving CEGT's proposal and is lifting the refund obligation, the request for clarification or rehearing is moot.

The Commission orders:

(A) The refund condition established by the September 30, 2003, Order is removed.

(B) First Revised Sheet No. 456, and Original Sheet No. 456A, to FERC Gas Tariff, Sixth Revised Volume No. 1, are approved, to be effective October 1, 2003, subject to the condition stated in paragraph, and the filing of modified language within 10 business days after this order issues.

(C) CEGT's request for clarification or rehearing is dismissed as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.